

CHAPTER 81-03-05.1 INCOME TAX ON CORPORATIONS

Section

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81-03-05.1-01. Cooperatives required to file. Cooperative corporations, such as grain elevators, oil companies, creameries, locker plants, and others, which distribute their income through patronage dividends are not exempted from filing state income tax returns.

History: Effective July 1, 1985.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38-09, 57-38-09.1, 57-38-32

81-03-05.1-02. Computation of unitary business income subject to apportionment. Repealed effective May 1, 1991.

81-03-05.1-03. DISC and FSC subject to North Dakota income tax. A DISC (domestic international sales corporation) is treated as an ordinary corporation and subject to state income tax. If the domestic international sales corporation has no activity within this state, but the parent corporation is required to file a tax return with this state, the deemed and actual distributions made by the domestic international sales corporation must be included in business income of the parent and subject to state tax.

The tax commissioner may require a combined report whereby income of the domestic international sales corporation is included in the parent's income for state tax purposes and deemed distributions and intercompany items are eliminated.

If both the parent corporation and the domestic international sales corporation are nonapportioning North Dakota corporations, the domestic international sales corporation must be required to file a return and compute income subject to state tax based on its total income, and the parent corporation will be allowed a deduction for the deemed distribution to the extent of the domestic international sales corporation's business activity taxed in this state. If the domestic international sales corporation is taxed on its total income, then the parent corporation may deduct one hundred percent of the deemed distribution.

An FSC (foreign sales corporation) must be treated the same as a domestic international sales corporation for state tax purposes. Distributions made by the

foreign sales corporation to the parent corporation must be included in the parent's income for state tax purposes. The tax commissioner may also require a combined report by the parent corporation to include the total income of the foreign sales corporation, with deemed distributions and intercompany items eliminated.

History: Effective July 1, 1985; amended effective April 1, 1995.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38-01, 57-38-01.3

81-03-05.1-04. DISC distributions. Actual distributions received from a DISC (domestic international sales corporation), or a former domestic international sales corporation, after December 31, 1984, on accumulated earnings derived before January 1, 1985, must be treated as taxable income and included in apportionable income for state tax purposes. Therefore, the taxable income of a corporation as computed pursuant to the provisions of the Internal Revenue Code of 1954, as amended, must be adjusted as necessary to include the actual domestic international sales corporation distributions received after December 31, 1984, in apportionable income for state tax purposes.

Actual distributions received after December 31, 1984, from accumulated earnings before January 1, 1985, from a domestic international sales corporation, or a former domestic international sales corporation, previously included in a combined report filed with this state, must be treated as previously taxed income and no adjustment to income for state tax purposes is necessary.

History: Effective July 1, 1985.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38-01, 57-38-01.3

81-03-05.1-05. Subchapter S corporation tax credits.

1. The following tax credits may not be claimed by a subchapter S corporation required to pay state income tax pursuant to subsection 1 of North Dakota Century Code section 57-38-01.4:
 - a. Credit for contributions to nonprofit private colleges.
 - b. Credit for contributions to nonprofit private high schools.
 - c. Geothermal, solar, or wind energy device credit.
 - d. Venture capital corporation credit.
 - e. Myron G. Nelson Fund, Incorporated credit.
 - f. Credit for employment of the developmentally disabled or chronically mentally ill.

9. Credit for purchase of memberships, payment of dues, or contributions to certified nonprofit development corporations.
2. These tax credits may only be claimed by an individual shareholder on individual income tax form ND-2 or form 37, or a fiduciary shareholder on fiduciary income tax return form 38.
3. The tax credit claimed by each shareholder must be computed by using the shareholder's distributive share ratio. The computed credit is subject to the limitations imposed by North Dakota Century Code chapters 10-30.1, 10-30.2, and 57-38.
4. The following tax credits may be claimed only by a subchapter S corporation required to pay state income tax pursuant to subsection 1 of North Dakota Century Code section 57-38-01.4:
 - a. Corporate tax credit for new industry.
 - b. Corporate tax credit for research and experimental expenditures.
5. The shareholders may not claim tax credits claimed by the subchapter S corporation.

History: Effective March 1, 1988; amended effective March 1, 1990; June 1, 2002.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 10-30.1-05, 10-30.2-11, 10-30.2-12, 57-38-01.4, 57-38-01.7, 57-38-01.8, 57-38-01.16, 57-38-01.17

81-03-05.1-06. Tax credit for research and experimental expenditures.

When calculating the tax credit provided for in North Dakota Century Code section 57-38-30.5, the corporation may include only those base period research expenses which were incurred in North Dakota.

History: Effective June 1, 1992.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38-30.5

81-03-05.1-07. Net operating losses.

1. A North Dakota net operating loss must be computed after the allocation and apportionment of a taxpayer's income or loss to North Dakota.
2. A North Dakota net operating loss may be carried back or carried forward for the same number of years as a federal loss of like character, e.g., regular net operating loss, product liability loss, or foreign expropriation loss.
3. Irrespective of a corporation's treatment of a federal net operating loss, to carry forward a North Dakota net operating loss a corporation must

make an election to do so on an original return that is timely filed for the year in which the loss was incurred. If an election is not made, the loss must be carried back.

4. If a corporation does not file a consolidated corporation income tax return pursuant to section 81-03-05.1-08, the corporation's North Dakota net operating loss may be carried back or carried forward even if:
 - a. The ownership of the corporation in the loss year is not the same as the ownership in each of the years to which the loss is carried, e.g., the corporation is acquired by another corporation.
 - b. The filing method used by the corporation in the loss year is not the same as the filing method used in each of the years to which the loss is carried, e.g., separate entity filing versus combined reporting.
5. If a corporation files a consolidated corporation income tax return pursuant to section 81-03-05.1-08, a North Dakota net operating loss must be computed for each corporation included in the consolidated return for the year in which the loss was incurred. This net operating loss may be carried back or carried forward subject to the following conditions:
 - a. If an election is made by the corporation filing the consolidated return to carry forward North Dakota net operating losses, each corporation included in the consolidated return must carry forward its North Dakota net operating loss.
 - b. Each corporation included in the consolidated return may carry back or carry forward its net operating loss to the extent that the corporation had North Dakota taxable income in the year to which the loss is carried.
6. The commissioner may audit a North Dakota net operating loss and the taxable income of the year to which the loss is carried.
7. A corporation may not carry forward its North Dakota net operating loss if the corporation has been dissolved as a separate corporate entity.
8. This section is effective for all tax years beginning after December 31, 1992.

History: Effective December 1, 1993.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38-01.3(2)(3)

81-03-05.1-08. Consolidated returns.

1. As used in this section:
 - a. "Combined report" means a tax return on which the tax liability is computed using the method described in chapters 81-03-05.2 and 81-03-05.3.
 - b. "Consolidated return" means a single corporation income tax return that reports the tax liability of more than one corporation engaged in business in or having sources of income from North Dakota.
 - c. "Taxpayer" means a corporation liable to report income or loss to North Dakota.
2. Only taxpayers who compute their liability using the combined report method may file a consolidated return. The consolidated return must contain the following information:
 - a. Identifies the name and federal identification number of the corporation that will file the consolidated return.
 - b. Reports the tax liabilities of all taxpayers in the combined report.
3. All taxpayers in the combined group must continue to file a consolidated return until the commissioner is notified in writing of the combined group's intent to file individual returns.
4. This section is effective for all tax years beginning after December 31, 1992.

Example:	Corporation A	Corporation B	Corporation C	Combined Amounts
Facts:				
Federal taxable income	\$500,000	\$(80,000)	\$40,000	\$460,000
Federal tax accrued	144,815	0	11,585	156,400
North Dakota property	150,000	0	10,000	
Total property	150,000	100,000	10,000	260,000
North Dakota payroll	60,000	0	40,000	
Total payroll	60,000	100,000	40,000	200,000
North Dakota sales	1,000,000	0	200,000	
Total sales	1,500,000	300,000	200,000	2,000,000
Computation of Apportionment Factor	Corporation A		Corporation C	
North Dakota property	\$150,000		\$10,000	

Combined property	260,000	260,000	
Property factor		.576923	.038462
North Dakota payroll	60,000	40,000	
Combined payroll	200,000	200,000	
Payroll factor		.300000	.200000
North Dakota sales	1,000,000	200,000	
Combined sales	2,000,000	2,000,000	
Sales factor		.500000	.100000
Sum of factors		1.376923	.338462
Apportionment factor		.458974	.112821

Computation of Tax Liability	Corporation A	Corporation C	Total Tax Due
Federal taxable income	\$460,000	\$460,000	
Federal tax deduction	156,400	156,400	
North Dakota apportionable income	303,600	303,600	
Apportionment factor	.458974	.112821	
North Dakota taxable income	139,345	34,252	
North Dakota tax due (1990 rates)	12,966	2,168	\$15,134

History: Effective December 1, 1993; amended effective September 1, 1997.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38-14